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**Criminal accountability of United Nations officials and experts on mission**

# Criminal accountability of United Nations officials and experts on mission

## Report of the Secretary-General

*Summary*

The present report has been prepared pursuant to paragraphs 16 and 17 of General Assembly resolution 66/93. Section II contains information received from Governments on the extent to which their national laws establish jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission. In section III information is presented on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Section IV contains comments of States as requested pursuant to paragraph 8 of the resolution. Sections V and VI concern information on the activities within the Secretariat in relation to the resolution.

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# I. Introduction

1. In its resolution 66/93, the General Assembly requested the Secretary-General to report on the implementation of the resolution, in particular with respect to its paragraphs 3, 5 and 9, as well as any practical problems in its implementation, on the basis of information received from Governments and the Secretariat.

2. By a note verbale dated 27 December 2011, the Secretary-General drew the attention of all States to that resolution and requested them to submit relevant information.

3. The present report provides information on efforts undertaken in that regard. Sections II and III concern activities and information received relating to the criminal accountability of United Nations officials and experts on mission, as required under paragraphs 3, 4, 5, 9 and 15 of resolution 66/93. Section IV contains the comments of States as requested pursuant to paragraph 8 of the resolution. Sections V and VI of the report relate to activities undertaken within the Secretariat in the implementation of paragraphs 9 to 14 of the resolution, focusing in particular on information regarding the bringing of credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters related thereto.

# II. Establishment of jurisdiction over crimes of a serious nature

## El Salvador

4. El Salvador stated that should personnel of the Salvadoran armed forces on mission with the United Nations commit any criminal action while on assignment, they may be tried and judged in El Salvador as the State has adopted relevant measures in its criminal legislation (articles 8, 9, 10 and 11 of the Criminal Code) enabling it to deal with a variety of matters, in accordance with the principles of territoriality, nationality and universality, depending on the nature of the crime committed and where it was committed.[1]

## Kuwait

5. Kuwait drew attention to the information concerning its Penal Code found in the report of the Secretary-General of July 2009 (A/64/183, para. 15).

## Panama

6. Further to the information it has previously submitted (A/65/185, para. 30, and A/66/174, para. 12), Panama advised that under article 18 of its new Criminal Code, Panamanian law was applicable to crimes against humanity (even if committed abroad), against the legal personality of the State, against public health and against the economy or public administration of the nation, as well as to the crimes of

[1] See also A/65/185, para. 17.

enforced disappearance, trafficking in persons, falsification of Panamanian public credit documents or official documents, stamps and seals and counterfeiting of Panamanian currency or other currencies that are legal tender in the country if, in the latter case, they were brought into or were intended to be brought into the territory of Panama.

7. Pursuant to article 20 of the Criminal Code, Panamanian law was applicable to crimes committed abroad, when:

(a) They produce or are intended to produce results in the territory of Panama;

(b) They are prejudicial to a Panamanian citizen or his/her rights;

(c) They are committed by Panamanian diplomatic agents, officials or employees who have not been prosecuted in the place where the crime was committed for reasons of diplomatic immunity;

(d) A national authority has denied the extradition of a Panamanian or a foreigner.

8. Moreover, under article 21 of the Criminal Code, notwithstanding the legislation in force in the place where the crime was committed and the nationality of the person accused of the crime, Panamanian criminal law shall apply to those who commit acts punishable under the international treaties in force in Panama, provided that the treaties give it territorial jurisdiction.

9. The provisions governing both money-laundering and cooperation are, moreover, conceived in general terms and are thus applicable to all persons involved in illicit activities, whether or not they are United Nations officials or experts on mission.

## Switzerland

10. Switzerland confirmed that its judicial authorities were fully competent to prosecute Swiss nationals serving as United Nations officials or experts on mission. It recalled that Swiss criminal law covered crimes committed by Swiss nationals abroad when those crimes were punishable in the territory in which they had been committed or when the place where the act had been committed did not fall under any criminal jurisdiction (see Criminal Code, article 7, para. 1 (http://www.admin.ch/ch/f/rs/c311_0.html)).[2]

11. Switzerland recalled that, in order for it to prosecute its nationals serving as United Nations officials or experts on mission, it was clear that the United Nations would first have to lift the immunity they enjoyed under international treaties.

12. Switzerland also recalled that during the period from 1 July 2010 to 30 June 2011, the United Nations Office of Legal Affairs had referred the cases of six United Nations officials and two experts on mission to States of nationality for investigation and possible prosecution (A/66/174, para. 61). All of the alleged crimes mentioned by the Secretary-General were punishable under at least one

[2] See also A/63/260, para. 33, and A/66/174, paras. 19-21.

provision of Swiss criminal law,[3] not only when the acts in question were committed on Swiss territory but also if they were committed by a Swiss national abroad (Criminal Code, art. 7).

13. Concerning the recommendation that the capacities of national authorities to investigate and prosecute crimes of a serious nature be strengthened, Switzerland informed the Secretary-General that a centre for jurisdiction over crimes against humanity and war crimes had been established within the Office of the Public Prosecutor of the Confederation.

## III. Cooperation between States and with the United Nations in the exchange of information and the facilitation of investigations and prosecutions

### El Salvador

14. The Code of Criminal Procedure of El Salvador regulates cooperation in international investigations and reciprocal judicial assistance with regard to all criminal conduct. In particular, articles 78 and 327 provide the following provisions.

#### Cooperation in international investigations

15. Article 78: if criminal conduct takes place wholly or in part outside national territory or is attributed to persons related to international organizations, the Office of the Prosecutor-General of the Republic may set up joint investigation teams together with foreign or international institutions. In any event, joint investigation agreements shall be authorized and overseen by the Prosecutor-General of the Republic.

16. Where crimes of an international nature are involved, the Attorney-General of the Republic may be part of the international and inter-agency commission designated to cooperate in the investigation.

#### Other cases of apprehension

17. Article 327: in addition to the cases established under this Code, the police shall proceed to arrest an individual, even without a court order, in the following cases:

(a) If the individual has escaped from a penal institution or any other detention centre;

(b) If the individual is in possession of objects from which it can be inferred that he/she has committed a punishable offence or has marks or signs that would suggest he/she has participated in a criminal act;

[3] Sexual abuse of a minor (see Criminal Code, article 187), fraudulent wire transfer (see Criminal Code, article 147), assault and inappropriate use of a firearm (see Criminal Code, article 126), fraud and blackmail (see Criminal Code, articles 146 and 156), fraudulent medical insurance claims (see Criminal Code, article 146), sexual exploitation and abuse of a minor (see Criminal Code, article 187) and fuel theft (see Criminal Code, article 139).

(c) When the person is the subject of a red notice from international police institutions.

18. In the cases referred in paragraphs (a) and (b) above, the police must immediately hand over the person arrested to the judicial authority or to the Prosecution. In the case referred to in paragraph (c) the police shall follow the rules for international juridical cooperation. The Counsel for the Defence of Human Rights shall be informed of the arrest/detention.

19. These provisions reflect the progress that El Salvador has made with regard to the adoption of measures to ensure that there is no impunity for serious crimes, whether they be committed by officials and experts on mission or by any other person. These provisions are also related to the implementation of its obligations regarding universal respect for and observance of human rights in accordance with the provisions of the various international instruments that El Salvador has ratified, inter alia, the American Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.[4]

## Finland

20. Finland recalled its previous comments (2008, 2009 and 2010) and advised that it had adopted, on 6 June 2012, a new national action plan for the implementation of Security Council resolution 1325 (2000) on women and peace and security. By the terms of the action plan "crisis management" covers, in the context of the United Nations, military, police and civilian participation in peacekeeping, peacebuilding and political operations.

21. The action plan on women and peace and security stresses that all forms of sexual exploitation and abuse constitute a criminal act. All Finnish military or civilian crisis management personnel involved in suspected sexual exploitation and abuse cases are to be reported to the competent authorities and investigated in accordance with Finnish law. In accordance with the action plan, Finland will report to organizations carrying out crisis management operations on how crimes committed within such operations are addressed and investigated.

22. The action plan also recalls that the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force in Finland in 2011, and notes that the Convention contains a waiver from the so-called requirement of double criminality. Sexual exploitation and sexual abuse of a child are also criminalized in Finland in cases where the act is committed in a State where such an act is not considered a crime. In Government-provided training, the criminal responsibility of crisis management personnel in accordance with Finnish law is stressed. This provision also applies in cases where personnel have immunity from the jurisdiction of national courts of the area of operation.

[4] See also A/65/185, paras. 56 and 57.

## Kuwait

23. Kuwait recalled the information on cooperation submitted in a previous report (A/64/183, para. 51). It also underlined its readiness to implement fully the measures contained in resolution 66/93, within the ambit of international judicial cooperation, as well as under all applicable conventions relating to this matter.

## Panama[5]

24. Panama, by its resolution No. 13 of 18 December 2000, established the International Affairs Secretariat within the Attorney General's Office, which is in charge of international legal assistance and collaboration within the framework of international cooperation, in strict observance of international and domestic norms. The Secretariat generally works in coordination with the Ministry of Foreign Affairs.

25. Through work done by the Attorney General's Office international agreements have been concluded with the agencies responsible for prosecuting crimes in other countries, including the development of best practices in dealing with their requests.

26. Panama has concluded mutual legal assistance treaties and ratified other legal instruments with various countries, including Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

27. Panama is also party to the Inter-American Convention on Mutual Assistance in Criminal Matters, concerning which it has made a declaration that it is under no obligation to offer assistance in cases where the acts in question are not crimes in Panama and that the offering of such assistance would violate legal provisions in force in Panama.

28. The Department for the Implementation of Mutual Legal Assistance Treaties, established by decision No. 1446 of 13 September 1991, later amended by decision No. 94 of 12 April 1995, is responsible for the implementation of the above agreements.

29. Act No. 39 of 9 July 2001 establishes that, for the purposes of international assistance and cooperation under the Inter-American Convention against Corruption, the General Transactions Division Four of the Supreme Court shall be designated as the main authority responsible for formulating, receiving, processing and dispatching requests for international assistance and cooperation.

30. The Judicial Code of Panama has standard norms on matters such as documents originating abroad, specifically under article 877, which indicates that such documents can be used as evidence in criminal proceedings if, except as otherwise established in international instruments, they meet the following criteria: (a) they have been authenticated by a diplomatic or consular official of Panama on duty in the place where the document originated; or (b) they have, in the absence of a diplomatic or consular official, been authenticated by the diplomatic or consular representative of a friendly nation, in which case a certification shall be attached by the Ministry of Foreign Affairs attesting that no Panamanian consular or diplomatic official is serving in the place where the document originated. It shall be assumed

[5] See also A/66/174, paras. 47 and 48.

that documents thus authenticated have been issued in conformity with the local law of their place of origin, unless the interested party proves the contrary.

31. There is no specific provision guaranteeing protection for victims of crimes committed by United Nations officials and experts on mission because Panamanian law does not normally make explicit provision for all possible occurrences. However, there are principles whose application in conjunction with other provisions do offer effective protection, including the Constitution, as well as the Code of Criminal Procedure, which establishes precautionary measures that may be imposed on those convicted of a crime. Panama also has some special laws governing protection, such as the special criminal regime for adolescents, domestic violence and the abuse of children and adolescents, the legislation governing offences against sexual integrity and freedom, the special provisions on drug-related offences, the Act for the protection of victims of crime and the Act on trafficking in persons and related activities.

## IV. Comments made pursuant to paragraph 8 of resolution 66/93

32. Switzerland remained convinced that in the long term the most appropriate way of effectively resolving the problems encountered in this area once and for all would be to draft an international convention. It believed that such a convention should include all categories of peacekeeping mission personnel, including officials and experts on mission as well as military personnel.

## V. Bringing credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made, and matters related thereto

33. In paragraphs 9 to 14, 16 and 17 of its resolution 66/93, the General Assembly urged Member States to provide information to the Secretary-General, requested the Secretary-General to provide certain information to the Assembly and requested the United Nations to take certain measures concerning the issue of the criminal accountability of officials and experts on mission.

### Referrals in relation to officials or experts on mission

34. The request in paragraph 9 of General Assembly resolution 66/93 is similar to that made by the Assembly in paragraph 9 of its resolutions 65/20 (see A/66/174), 64/110 (see A/65/185), 63/119 (see A/64/183) and 62/63 (see A/63/260).

35. The information provided in the present report relates to the period from 1 July 2011 to 30 June 2012. During the reporting period, the Office of Legal Affairs referred to States of nationality the cases of 17 United Nations officials for investigation and possible prosecution. The cases concerned the following allegations: the first, fraud in relation to education grant entitlements, which was referred to two separate Member States; the second through eighth, fuel fraud; the ninth, theft of funds; the tenth, procurement fraud, which was referred to two separate Member States; the eleventh, theft of funds; the twelfth through fifteenth, dental insurance fraud; and the sixteenth and seventeenth, theft of funds.

**Requests for indication of status and assistance that may be provided by the Secretariat**

36. The Office of Legal Affairs requested the States to which cases were referred during the reporting period to keep the United Nations informed of any action taken by national authorities in relation to such cases. As at the date of preparation of the present report, one State to which a referral was made has contacted the Office of Legal Affairs to note that the matter had been raised with relevant officials. The Office of Legal Affairs remains ready to provide assistance with regard to all referrals made.

37. Details of earlier requests by the Secretariat for information from States on how they were handling cases previously referred to them have already been received (see A/64/183, para. 63, A/65/185, paras. 85 and 86 and A/66/174, paras. 62 and 63).

**Possible use by States exercising jurisdiction of information from United Nations investigations**

38. In paragraph 11 of its resolution 66/93, the General Assembly requested the United Nations, when its investigations into allegations suggest that crimes of a serious nature may have been committed by officials or experts of the Organization on mission, to consider any appropriate measures that may facilitate the possible use of information and material for purposes of criminal proceedings initiated by States, bearing in mind due process considerations. In the same vein, in paragraph 13 of that resolution, the Assembly urged the United Nations to continue cooperating with States exercising jurisdiction in order to provide them, within the framework of the relevant rules of international law and agreements governing activities of the United Nations, with information and material for purposes of criminal proceedings initiated by States.

39. In that regard, it is important to recall that the legal framework within which the referrals are made by the United Nations and the role of the Secretary-General have been outlined previously (see A/63/260, sect. IV).

40. The United Nations cooperates with law enforcement and judicial authorities of relevant Member States in accordance with its rights and obligations under the Convention on the Privileges and Immunities of the United Nations of 1946, as well as other relevant international agreements and applicable legal principles. Accordingly, the Organization will disclose documents and/or information and waive immunity on a case-by-case basis where, in the opinion of the Secretary-General, immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. Consequently, information obtained by the Organization may be provided to the relevant authorities, and documents may be shared, subject to consideration of confidentiality and privileges and immunities. Documents may be redacted where necessary. It should be noted that, since the United Nations does not have any criminal investigative or prosecutorial jurisdiction, the use of any documents or information provided by the United Nations, including their admissibility in any legal proceedings, is a matter for determination by the relevant judicial authorities to whom such documents or information have been provided.

**Protection of United Nations officials and experts on mission from retaliation**

41. In paragraph 12 of its resolution 66/93, the General Assembly encouraged the United Nations, should allegations against United Nations officials or experts on mission be determined by a United Nations administrative investigation to be unfounded, to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission.

42. Moreover, the General Assembly, in paragraph 14 of the same resolution, emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission.

43. In this regard, United Nations officials who report misconduct by other United Nations officials or experts on mission are protected against retaliation under the staff regulations, rules and relevant administrative issuances, in particular, the Secretary-General's bulletin entitled "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations" (ST/SGB/2005/21), with the objective of enhancing protection for individuals who report misconduct or cooperate with duly authorized audits or investigations. In addition, it should be noted that staff members may appeal any retaliatory measure through the internal justice system.

## VI. Other practical measures to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training

44. The Department of Peacekeeping Operations and the Department of Field Support continue to implement the three-pronged strategy of the United Nations to address misconduct, in particular sexual exploitation and abuse, through preventive measures, the enforcement of United Nations standards of conduct and remedial action. Training, awareness-raising activities and preventive measures at the mission level are at the centre of the actions taken by field missions to prevent misconduct and sexual exploitation and abuse. Resources are allocated to that effect, both at Headquarters and in field missions.

45. During the reporting period, 12 conduct and discipline teams were in place in peacekeeping and special political missions supported by the Department of Field Support, covering 19 missions and the United Nations Logistics Base at Brindisi, Italy (UNLB).

46. Conduct and discipline teams continue to develop and implement various measures on prevention, enforcement and remedial action. Based on monthly mission reports submitted during the reporting period, training in United Nations standards of conduct as well as specific training on the prevention of sexual exploitation and abuse was conducted either as part of the induction of new personnel at missions or at separate sessions. Communication and awareness-raising activities among conduct and discipline teams consisted of messages on prevention of misconduct and sexual exploitation and abuse, pride of purpose and behaviour appropriate to United Nations personnel. This was delivered through intra-mission

tools such as radio and online broadcast messaging, e-mail alerts, posters and administrative instructions from mission leadership.

47. Predeployment training of the United Nations standards of conduct is provided to staff members before their arrival at peacekeeping and special political missions as part of the one-week training regularly delivered at UNLB. Member States continue to be requested to provide similar predeployment training to their uniformed personnel, using training materials developed by the United Nations and made available to the troop-contributing and police-contributing countries. This material was revised and updated in December 2009 and can be adapted to reflect the different disciplinary and criminal accountability processes applicable to staff members, experts on mission and members of military contingents that may be deployed in field missions.

48. In October 2011, a meeting involving high-level representatives of the United Nations was hosted by the Department of Field Support to discuss and formulate a renewed proactive strategy to address sexual exploitation and abuse by mission personnel. Among the issues discussed were the need for the review and strengthening of training materials and awareness-raising messages in order to ensure that standards and values are clearly communicated and understood. This will be addressed as part of the Integrated Conduct and Discipline Framework that was put forward, later in 2011, with the objective of enhancing the integration of conduct and discipline in field missions as a global corporate function.

49. In his report on special measures for the protection from sexual exploitation and sexual abuse (A/66/699, para. 36), the Secretary-General reiterated his commitment to criminal accountability, indicating that he would not hesitate to lift the immunity of staff members and experts on mission who were alleged to have engaged in criminal conduct, provided that there was an expectation that the alleged perpetrators would receive a prompt, fair and impartial hearing that conforms to accepted international norms.